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United States Department of the Interior

FISH AND WILDLIFE SERVICE

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September 20, 2018

Colonel Lars N. Zetterstrom
Galveston District, Corps of Engineers
Attn: Jayson Hudson
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Zetterstrom:

Thank you for the opportunity to comment on the Corps of Engineers (Corps) Public Notice SWG-2013-00147, dated August 21, 2018, for Freeport LNG Development, L.P.'s proposed construction and operation of a dredged material placement area (DMPA). Construction of the project is anticipated to fill 196.5 acres of wetlands and open water. The project is located in wetlands east of the Brazos River, north of the Gulf Intracoastal Waterway (GIWW), along Levee Road, southwest of Freeport, in Brazoria County, Texas.

Our comments and recommendations are provided in accordance with the revised Department of the Interior Manual Instructions (503 DM 1), dated August 3, 1973, the Fish and Wildlife Coordination Act ((16 U.S.C. 661-667(e)), the Endangered Species Act of 1973 (ESA or Act) (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347).

The U.S. Fish and Wildlife Service (Service) accompanied representatives from the applicant's environmental consultant, the Environmental Protection Agency, and Texas Parks and Wildlife Department on a site visit on September 7, 2018. The wetlands to be filled for the project consist of high functioning brackish marsh. The Service appreciates the applicant and their consultant facilitating timely access to evaluate the site and the applicant's efforts to analyze alternatives to the proposed fill and to put forth a compensatory mitigation proposal. Recognizing the relative scarcity of DMPA options in the Freeport area the Service still ultimately finds the proposal unacceptably destructive to Service trust resources, namely wetlands, migratory birds and potentially threatened or endangered species. For the reasons and concerns stated below the Service recommends denial of permit application SWG-2013-00147 as proposed:

- The Service reviewed the extensive alternative analysis provided by the applicant entitled "Freeport LNG Liquefaction Project and Phase II Developments, Environmental Analysis", dated June 2018. The Service recommends the Corps and applicant evaluate combinations of offshore dredged material placement, upland confined placement, new construction dredged material placement sites, and beneficial use as part of a long-term

dredged material management plan to minimize the impacts of the current proposal. The current proposed alternative is for a single site with an anticipated 15-year lifespan. We believe the applicant's operational plans for this facility far exceed 15 years and they should reasonably plan for a longer term given the regulatory timeframes and operational risks of a single designated DMPA. For example, the private DMPA/beneficial use (BU) Site A currently consists partly of an abandoned residential canal subdivision. This approximate 45-acre site (not 18.3 acres as stated in the document) bounded by Quintana Road, FM 1495, the GIWW, and Compass Ct. was previously impacted significantly by dredging and filling activities. A DMPA cell constructed here might reduce the footprint impact to higher functioning wetland resources at the proposed site, reduce the burden of compensatory mitigation, and meet other DMPA assessment criteria (proximity, zoning, site ownership, etc.) if considered as a component of a broader effort to manage dredged material.

- Similarly, BU Alternatives B, C, D, E, and F may accommodate approximately 100,000 cubic yards of dredged material each by the applicant's estimates. As a single maintenance cycle's worth of dredged material could potentially create, enhance or restore more than 650 acres of emergent estuarine marsh, the Service recommends such alternative combinations be fully evaluated, including cost, but without cost as the ultimate determining variable. The Corps and applicant must acknowledge that such wetlands provide vital services in buffering storm surge, attenuating coastal flooding, protecting vital infrastructure, and maintaining coastal resiliency as well as fish and wildlife functions. The applicant should also understand that the Service has previously financially assisted BU site developments where benefits to our trust resources are realized.
- The applicant should likewise evaluate the development of in-kind compensatory mitigation in the Freeport vicinity. One or more of the BU sites proposed could be readily utilized as a compensatory mitigation site for unavoidable impacts to the brackish marsh proposed to be impacted by the applicant's preferred alternative (i.e., private DMPA Alternative C).
- Regarding the applicant's preferred alternative, the Service is aware that the parcel owned by the applicant (Brazoria County Appraisal District parcel ID 663312) consists of 294.45 acres. The Service wants to understand why the proposed DMPA configuration was selected when the southern end of the parcel contains open water and appears to have been previously impacted by development from oil and gas or other industry. In general, emergent wetlands are more productive than open water habitats, particularly those aquatic areas previously impacted by development as those in the southern end of the parcel appear to be. Thus, the Service recommends an additional reconfigured DMPA be evaluated that minimizes the footprint impact on the highest functioning aquatic resources onsite.
- Table 1 of the June 2018 Environmental Analysis document mentioned above states that the preferred alternative contains 171.8 acres of wetlands and waterbodies to be impacted. The Corps public notice states the total is 196.5 acres of footprint impact to wetlands and other waters. Please explain the discrepancy.
- The Service would appreciate additional information regarding the Corps' determination regarding the potential use of the preferred site by the endangered Whooping crane *Grus americana*. The applicant provides site descriptions of BU Sites B, D, E and F, and

DMPA Sites B and E as potentially providing habitat for Whooping cranes and makes preliminary “may affect” determinations for each, but does not draw that conclusion for private DMPA Site C (the applicant’s preferred alternative). Private DMPA Site C includes brackish marsh and contains widespread presence of Carolina wolfberry *Lycium carolinianum*, a plant and common food item of whooping cranes.

- As a reminder to the Corps, under section 7(a)(2) of the ESA and the implementing regulations, it is the responsibility of each federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally listed species. Based upon an inventory of listed species and other current information, the federal action agency determines if any endangered or threatened species may be affected by the proposed action. The Service's Consultation Handbook is available online for further information on definitions and process (http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf). The Service recommends that the Corps follow the consultation procedures pursuant to Section 7 of the ESA regarding any potential effects to listed species.
- The proposed compensatory mitigation plan is wholly unacceptable as the proposed wetlands to be enhanced or restored are freshwater prairie wetlands. The Service recommends the applicant develop an in-kind compensatory mitigation plan to compensate for unavoidable impacts to brackish wetlands.
- The functional assessment utilized to establish the functional value of the compensatory mitigation wetlands was the Corps’ Riverine Herbaceous/Shrub interim Hydrogeomorphic Model (iHGM). The brackish wetlands at the proposed impact site do not rely upon riverine inputs and are more appropriately within the domain of the Galveston District’s tidal fringe iHGM. The Service recommends the impact site wetlands be assessed with a more appropriate functional assessment methodology and that compensatory mitigation be in-kind and commensurate with the significant level of proposed wetland impacts.

The Service anticipates additional discussions with the Corps and applicant to resolve our comments, clarify the Corps’ responsibilities under ESA section 7(a)(2), and looks forward to a response to our comments and concerns expressed herein.

Thank you for the opportunity to review and provide comments on the proposed permit application SWG-2013-00147. If you need additional information, please contact Jeff Hill, staff biologist at 281/212-1508.

Sincerely,



Charles Ardizzone
Field Supervisor